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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,897

02/10/2006

Carlo Cognolato

05788.0356

5161

22852

7590

08/23/2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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EXAMINER

HOFFMANN, JOHN M

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

08/23/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,897	<b>Applicant(s)</b> COGNOLATO ET AL.	
	<b>Examiner</b> John Hoffmann	<b>Art Unit</b> 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-26 is/are pending in the application.
- 4a) Of the above claim(s) 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-19 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Adler EP 0978487.

See figure 4A and figure 4 of Adler (along with the associated relevant text). 203 is the central orifice with a concave shaped cross section (since it meets the definition set forth in the specification) and 204 is the annular orifice. The first, third and third surfaces are clearly anticipated.

As to the intended use limitations: are recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). By injecting the right components at the right rates, one would be able to perform a vapor deposition process.

Claim 15 is clearly met.

Claim 16: all of the spaces 206 comprise comprised of a ring of nozzles. They can be used to eject any fluid, including a flame reactant.

Claim 17: 204 is clearly between the central orifice and the ring of nozzles.

Claim 18: all sectors have identical minimum radial dimensions, and maximum radial dimensions. It is noted that claim does not require any structure that separates the sectors. Examiner's dictionary indicates a definition of "a geometric figure bounded by two radii and the included arc of a circle". Applicant's figures do not show any structure which is bounded by two radii, rather one would have to imagine extensions. Most notably, the second angular sectors appear to not even have partial radii, only an included arc. Thus the prior art sectors need not have structure which define the radii.

Claim 19 is met, because one can have sectors anywhere, including sectors at the "same angular positions" as claimed. As with claim 18, since applicant's invention does not have structure/walls to delimit the sectors, the prior art also does not need structure/walls to delimit the sectors. They can be arbitrary, as long as they have the radial dimensions as required by claim.

Claim 21: See figures 13, 10A and 5 of Adler: 301 is the central duct terminating in the central orifice 204, and 54 is the central member inside the duct for forcing the material toward an external boundary.

Claim 22: Figures 7-9 and 14 show that 54 has enlarged radial portions that fit with the external walls.

***Allowable Subject Matter***

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 7/12/2010 have been fully considered but they are not persuasive.

It is argued that rod 54 of Adler is not an orifice or opening. Examiner agrees, however, 203 is. Examiner agrees that the previous elements do not correspond to the present claim limitations, which are now directed to the orifices, rather than the structure as previously claimed. Nevertheless, Adler anticipates all of the limitations as indicated above.

It is further argued that the plurality of orifices are oval and do not have a concave cross section. This too is not very relevant, because the annular openings do have the claimed concave shaped cross section.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Daniels can be reached on 571-272-2450. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Hoffmann  
Primary Examiner  
Art Unit 1791

/John Hoffmann/  
Primary Examiner, Art Unit 1791

**Search Notes**

Application No.

10/538,897

Examiner

John Hoffmann

Applicant(s)

COGNOLATO ET AL.

Art Unit

1791

**SEARCHED**

Class	Subclass	Date	Examiner
239	601	6/10/2009	JMH
65	530,531	6/10/2009	JMH
to	date	8/26/2010	jmh

**INTERFERENCE SEARCHED**

Class	Subclass	Date	Examiner

**SEARCH NOTES  
(INCLUDING SEARCH STRATEGY)**

	DATE	EXMR
EAST text search, see printout	6/10/2009	JMH
PALM inventor name search	6/10/2009	JHM